

REMARKS

Reconsideration for allowance of Claims 1-16 and 18-29 is requested for the reasons set forth herein. Claims 1-16 and 18-29 remain pending in this Application. Claim 1 has been amended. Claim 16 has been canceled. Claims 36-46 have been added. After entry of the amendments provided herein, Claims 1-15, 18-29, and 36-46 will be presented for examination.

Rejection for Obviousness-Type Double Patenting (ODP)

Applicant acknowledges with appreciation the Examiner's withdrawal of the obvious-type double patenting rejection over the '246 patent.

The rejection of Claims 1, 5, 9-11, 14, 16, 18-24, 30, 31, and 34 for nonstatutory obviousness-type double patenting over all claims of U.S. Pat. No. 6,777,103 ("the '103 Patent") in view of Schmidt (CA 1,177,205) ("Schmidt") was maintained. It is believed that the amendments and remarks made herein overcome this rejection, but if Applicant is in error a terminal disclaimer will be provided upon an indication of allowable subject matter.

Rejections under 35 U.S.C. § 103(a)

Claims 1-7, 10, 11, 15, 16, 18-27, and 29-35 were rejected over WO 97/08111 ("Naji") in view of Schmidt. Claims 2-7, 10, 11, 15, 16, and 18-19 depend from Claim 1. Claims 21-27, and 29-35 depend from Claim 20. Claims 8 and 9 are rejected over Naji in view of Schmidt and further in view of U.S. Pat. No. 4,225,383 (McReynolds). Claims 12 and 13 are rejected over Naji in view of Schmidt and further in view of Battista and Holbek. Claim 14 is rejected over Naji in view of Schmidt and further in view of Randall. Claim 28 is rejected over Naji in view of Schmidt and further in view of Hoskins.

At page 11 of the Office Action, the Examiner responds to Applicant's remarks made in the response filed September 8, 2007, regarding the rejection of independent claim 1 and its dependent claims, and states that it is unclear why Schmidt's teaching of a mixture would teach away from the claimed invention. The prior response provided:

Schmidt states at page 1, lines 21-24 "[t]here therefore exists the task of finding a hydrophobising medium for cellulose-containing material, which exhibits its maximum effect in low concentrations and which is employed with a trouble free solvent." Thus, this statement is the object of the invention allegedly disclosed by Schmidt. In the following paragraph, Schmidt states how its allegedly disclosed invention satisfies the object of the invention:

[i]n fulfillment of this object, an impregnation medium for rendering cellulose-containing materials hydrophobic has been found which is characterized as aqueous or aqueous/alcoholic solution of a mixture of at least one alkali metal aluminate and at least one alkylsilanol (alkyl = ethyl, propyl, or n-butyl). This *mixture* already shows a hydrophobising effect as 0.2% solution in water. Surprisingly, however, *only the mixture* of these two components possesses an impregnating effect, whereas both the aqueous silanol solution and also an aluminate solution *alone show no impregnating effect.*"

(Schmidt, 1:25-33 to 2:2; emphasis added). Thus, Schmidt teaches that only the *mixture* of alkylsilanol and alkali metal aluminate create an impregnating hydrophobizing medium. Further, Schmidt *expressly* teaches that *neither* compound *alone* has a hydrophobizing effect. Thus, Applicant respectfully submits that Schmidt teaches away from the claimed invention.

One of ordinary skill who has read Schmidt would conclude that an alkalia metal aluminate *was required* for creating a hydrophobizing effect. For instance, Schmidt expressly states that a "only the mixture of these two components" [alkali metal aluminate and

alkylsilanol] possess an impregnating effect.” In case there was any doubt, Schmidt emphasizes the point and cautions that “whereas both the aqueous silanol solution and also an aluminate solution alone show no impregnating effect.” One of ordinary skill in the art would no doubt be discouraged from treating individualized cellulose fibers with a “sizing agent compris[ing] a hydrophilic functional group and a hydrophobic functional group.” Perhaps the Examiner disagrees that teaching away is the proper characterization of how one of ordinary skill would lack a motivation to combine the references’ teachings. One of ordinary skill would not consider the combination of Schmidt with Naji to have a reasonable likelihood of success. One of ordinary skill could not reasonably believe that cellulose fibers could be hydrophobized by incorporating an alkylsilanol absent the addition of an alkali metal aluminate as taught by Schmidt into the method generally provided by Naji.

Because the combination of Naji and Schmidt teaches away from the claimed invention, and because one of ordinary skill in the art would not reasonably expect that using an alkylsilanol in the method of Naji would hydrophobize individualized cellulose fibers, for at least these reasons the rejection of independent Claim 1 should be withdrawn. Because Claims 2-7, 10, 11, 15, 18-27, and 29 depend either directly or indirectly from Claim 1, it is believed that the rejection of these claims should also be withdrawn.

Claims 8, 9, 12, 13, 14, and 28 depending from Claim 1 have been separately rejected based in part on the combination of Naji and Schmidt, with further reliance on the tertiary and/or quaternary references of McReynolds (Claims 8 and 9), Battista and Holbeck (Claims 12 and 13), Randall (Claim 14), and Hoskins (Claim 28) for alleged teaching of these dependent claims. None of the additional references overcomes the deficiencies of the combination of Naji with Schmidt relied upon to reject Claims 8, 9, 12, 13, 14, and 28, and it is respectfully requested that the rejections of these claims be withdrawn for at least the reasons discussed for Claim 1.

New Claims 36-46

Claims 36 and 43 are independent. Claim 36 recites treating the cellulose fibers with a sizing agent of about 0.01 to 50% by fiber mass for more than one hour and less than about 28 hours, which is not suggested by the prior art of record. Claim 43 recites treating the cellulose fibers with about 5 to 10% sizing agent for more than an hour and less than about 28 hours, mixing the sized fibers with about 30 to 45% cementitious binder and about 38 to 60% ground silica, and at least one of density modifiers and additives to form a fiber cement mixture, forming the mixture a preselected shape and size, and curing the article for about 6 to 8 hours at 30 to 45°C to form a fiber reinforced composite building material. The method of Claim 43 is also not believed to be suggested by the prior art of record.

Applicant respectfully submits that the Application is in condition for allowance, and Applicant earnestly seeks such allowance of Claims 1-15, 18-29, and 36-46. Should the Examiner have any questions, comments, or suggestions in furtherance of the prosecution of this Application, the Examiner is invited to contact the undersigned at 214.999.4712.

To the extent that any further fees are required during the pendency of this Application, including petition fees, the Commissioner is hereby authorized to charge payment of any additional fees, including any fees under 37 C.F.R. § 1.16 or 37 C.F.R. § 1.17, to Deposit Account No. 07-0153 of Gardere Wynne Sewell LLP and reference Attorney Docket No. 129843.1030. In the event that any additional time is needed for this filing, or any additional time in excess of that requested in a petition for an extension of time, please consider this a petition for an extension of time for any needed extension of time pursuant to 37 C.F.R. § 1.136 or any other section or provision of Title 37. Applicant respectfully requests that the Commissioner grant any such petition and authorize the Commissioner to charge the Deposit Account referenced above. Please credit any overpayments to this same Deposit Account.

Please direct all correspondence to the practitioner listed below at Customer No.

60148.

Respectfully submitted,

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